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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Edgar St. Pierre et al.  
Serial No: 09/342,453  
Confirmation. No.: 6555  
Filed: June 29, 1999  
For: METHOD AND APPARATUS FOR DUPLICATING  
COMPUTER BACKUP DATA

Examiner: Thai, Tuan V.  
Art Unit: 2186

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CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8(a)

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*Richard F. Giunta*

Richard F. Giunta, Reg. No. : 36,149

Commissioner For Patents  
Washington, D.C. 20231

Sir:

Transmitted herewith are the following documents:

- ☒ [X] Response to Office Action
- ☒ [X] Return Receipt Postcard

If the enclosed papers are considered incomplete, the Mail Room and/or the Application Branch is respectfully requested to contact the undersigned at (617) 720-3500, Boston, Massachusetts.

A check is not enclosed. If a fee is required, the Commissioner is hereby authorized to charge Deposit Account No. 23/2825. A duplicate of this sheet is enclosed.

Respectfully submitted,  
*Edgar St. Pierre et al., Applicant(s)*

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Richard F. Giunta, Reg. No. 36,149

Commissioner for Patents  
Washington, D.C. 20231

RESPONSE TO OFFICE ACTION

Sir:

In response to the Office Action mailed November 6, 2002, Applicants respectfully request reconsideration. To further the prosecution of this application, the rejections set forth in the Office Action have been considered and are addressed below. The claims as presented are believed to be in allowable condition.

In Paragraphs 5-8, each of the pending claims (1-39) is rejected under 35 U.S.C. §102 or §103 over Whiting. These rejections are respectfully traversed. Contrary to the assertions set forth in the Office Action, Whiting is not directed to techniques for duplicating data stored on a backup storage medium, but rather, is merely directed to various techniques for backing up data onto a backup storage medium.

Overview of the Present Invention

The present invention is directed to techniques for duplicating computer backup data. (specification, page 1, lines 1-2). It is possible for backup storage media to be damaged, or for

the backup data stored thereon to be corrupted such that it is unrecoverable. (page 1, lines 9-11). Thus, some computer systems allow backup storage media to be duplicated (page 1, lines 11-12). Using conventional systems, an exact copy of the backup storage medium was made to make a duplicate backup storage medium through a process referred to as "media duplication." (page 1, lines 13-16). Aspects of the present invention recited in the pending claims relate to techniques for copying backup data that are not limited to media duplication.

### Whiting

Whiting is directed to a system for creating backups onto a backup storage medium. (see Abstract). Whiting discloses techniques for backing up data using disk space on a network file server as the backup storage medium. (col. 6, lines 21-23). However, contrary to the assertion in the Office Action, Whiting does not discuss making copies of the backup data stored on the backup storage medium. Thus, Whiting is entirely unrelated to the aspects of the present invention recited in claims 1-39.

The sections of Whiting cited as purportedly disclosing what is recited in the independent claims are the abstract and the description beginning at col. 5, line 7. The quoted portion of the abstract refers to performing something analogous to an incremental backup, wherein after an initial backup of a particular volume is made, only changed portions are stored to the backup storage medium at later points in time. As with the rest of the disclosure in Whiting, this merely relates to techniques for creating backup data on a backup storage medium, and does not relate at all to making a duplicate copy of the backup data. Similarly, the disclosure at col. 5, line 7 of Whiting merely refers to techniques for identifying multiple copies of a file, such that only a single copy is "stored in the backup storage means." (col. 5, lines 11-12). This disclosure again relates simply to the creation of backup data on a backup storage medium, and is entirely unrelated to creating duplicate backup data.

The above explanation is provided for the Examiner to appreciate broad differences between the disclosure of Whiting and the claims of the present application. However, the characterizations provided above may not apply to each of the independent claims of the present application, and Applicants do not rely upon those arguments for explaining the patentability of any of the pending claims. Rather, Applicants rely solely on the arguments presented below which point out particular limitations in each of the independent claims that are believed to distinguish over Whiting.

Claims 1-6

Claim 1 is directed to a method for duplicating at least some of the backup data stored on a backup storage medium, and comprises a step of copying only a subset of the backup data onto a duplicate backup storage medium. As discussed above, Whiting teaches only the creation of backup data on a backup storage medium, and does not teach duplicating the backup data onto a duplicate backup storage medium. Therefore, claim 1 patentably distinguishes over Whiting, such that the rejection of claims 1-6 under §102 as anticipated by Whiting should be withdrawn.

Claims 7-12

Independent claim 7 is directed to a computer readable medium encoded with a program that, when executed, performs a method like that recited in claim 1. Therefore, for the reasons discussed above, claims 7-12 patentably distinguish over Whiting, such that the rejection of these claims under §102 as being anticipated by Whiting should be withdrawn.

Claims 13-19

Independent claim 13 is directed to a backup server that comprises a controller to control duplication of backup data. The controller is adapted to copy only a subset of the backup data onto a duplicate backup storage medium. As discussed above, Whiting does not teach or suggest the duplication of backup data. Thus, the rejection of claims 13-19 under §102 as being anticipated by Whiting should be withdrawn.

Claims 20-24

Independent claim 20 is directed to a method for duplicating at least some backup data stored on a backup storage medium, and comprises steps of reading the backup data corresponding to a first work item as a logical data stream and writing the backup data to at least one duplicate backup storage medium as a logical data stream. As discussed above, Whiting does not teach a method of duplicating backup data. Therefore, it is respectfully asserted that the rejection of claims 20-24 under §102 as being anticipated by Whiting should be withdrawn.

Claims 25-29

Independent claim 25 is directed to a computer readable medium encoded with a program that, when executed, performs a method like that of claim 19. Therefore, for the reasons stated above, claims 25-29 patentably distinguish over Whiting, such that the rejection of these claims under §103 as obvious over Whiting should be withdrawn.

Claims 30-35

Independent claim 30 is directed to a backup server that comprises a controller to control duplication of backup data stored on a backup storage medium. The controller is adapted to read the backup data as a logical data stream and to write the backup data to a duplicate backup storage medium. As should be appreciated from the foregoing, Whiting does not teach anything relating to the copying of backup data to create duplicate backup data. Therefore, claims 30-35 patentably distinguish over Whiting, such that the rejection of these claims under §102 as being anticipated by Whiting should be withdrawn.

Claim 36

Claim 36 is directed to a method for duplicating at least some backup data and comprises a step of copying at least some of the backup data to a backup storage medium of a type that differs from the medium on which the backup data is stored. As should be appreciated from the foregoing, Whiting does not teach or suggest the copying of backup data to a different backup storage medium. Therefore, the rejection of claim 36 under §102 as being anticipated by Whiting should be withdrawn.

Claim 37

Claim 37 is directed to a computer readable medium encoded with a program that, when executed, performs a method like that of claim 36. Therefore, for the reasons discussed above in connection with claim 36, the rejection of claim 37 under §102 as being anticipated by Whiting should be withdrawn.

Claims 38-39

Claim 38 is directed to a backup server that comprises a controller to control duplication of backup data. The controller is adapted to copy at least some of the backup data to a second

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backup storage medium of a different type from the one on which the backup data is stored. As should be appreciated from the foregoing, Whiting does not teach copying of backup data to another storage medium. Therefore, it is respectfully asserted that the rejection of claim 38 under §102 as being anticipated by Whiting should be withdrawn.

### CONCLUSION

In view of the foregoing remarks, this application is in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes for any reason that the application is not in condition for allowance, he is respectfully requested to contact the undersigned at the number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,  
*Edgar St. Pierre et al., Applicant(s)*

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